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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/935,131	08/21/2001	Limor Schweitzer	XACTP015B	9614

28875 7590 10/03/2005

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EXAMINER	
THOMPSON, MARC D	
ART UNIT	**PAPER NUMBER**
2144	

DATE MAILED: 10/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/935,131	SCHWEITZER ET AL.	
	Examiner	Art Unit	
	Marc D. Thompson	2144	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *04 May 2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *20-50* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *20-50* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *21 August 2001* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *20041126*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/4/2005 has been entered.

2. Claims 20-50 remain pending.

Priority

3. No claim for priority has been made in this application.

4. This application claims priority as a continuation to U.S. Application 09/552,818, filed 4/20/2000, which claims benefit to provisional application 60/141,351, filed on 6/28/1999.

5. The effective filing date for the subject matter defined in the pending claims in this application which have support in the parent application and its' associated provisional application is 6/28/1999.

Drawings

6. The Examiner contends that the drawings submitted on 8/21/2001 are acceptable for examination proceedings.

Double Patenting

7. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686

F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

8. Claims 20-50 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 3-10, and 12-17 of copending Application No. 09/553,261. This is a provisional obviousness-type double patenting rejection.

9. Both application recite session reconstruction methodology utilizing multiple analyzers. No patentable difference between these two sets of claims can be determined.

10. Claims 20-50 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 20-46 of copending Application No. 10/458,768. This is a provisional obviousness-type double patenting rejection.

11. These applications both recite session reconstruction, statistical analysis of information flows, and a plurality of [flow] analyzers. Again, any distinction between the claimed subject matter in these application is not readily apparent.

12. Claims 20-50 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-25 of U.S. Patent No. 6,615,262.

13. Although the conflicting claims are not identical, they are not patentably distinct from each other because both sets of claims positively recite identification, labeling, and reconstruction of information flow sessions. Additionally, the patented claims seemingly implore "means plus function" language in a number of the claims which forces interpretation in accordance with structure(s) present in the specification, which is essentially identical to the present application. Thus, a direct similarity between the claimed inventions exist.

Claim Rejections - 35 USC § 101

14. 35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

15. Claims 30-39 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter, the claimed invention lacks patentable utility, and the disclosed invention is inoperative and therefore lacks utility.

16. Claims 30-39 are directed to a computer program, per se, which is not statutory. See, inter alia, MPEP § 2106. Likewise, the incorporation of computer program functionality on a tangible medium is not sufficient to constitute statutory subject matter; a merging of hardware and functional state changing of the hardware is required for proper statutory conformance. In short, a program, per se, minimally existing and/or recorded on some type of medium alone does not actually DO anything; the functionality of the program can only be realized when actually joined/merged with a functional, state changing, computing element.

17. These are examples of acceptable claim wording for computer software products:

A computer program product tangibly embodied on a computer readable medium, which when executed by a computer causes the computer to perform a method for [doing something]...,

said computer program product comprising:
means for ...,
means for ...,
means for... .

-and-

A computer readable medium storing a computer program for [doing something]...,
said computer program, which when executed by a computer, causes said computer to perform the steps of:
a step for...
a step for...
a step for... .

Allowable subject matter

18. The arguments presented by Applicant in the response, received on 5/4/2005, are generally considered persuasive.

19. Applicant argues the lacking of the prior art in disclosing the distributed functionality of session reconstruction including collaboration between analyzers, this collaboration minimally including transfer of the derived session data in a message sent from a first analyzer to a distinct second analyzer when successful session reconstruction occurs, the transfer of unrecognized data to the second analyzer when successful session reconstruction does not occur, in a system utilizing plural analyzers which aggregate packets, determine specific flows, sessions, users and associated applications for each packet, packet flow, and session, acting to reconstruct the user session on the network through the use of policy information to bill client users for network services. This functionality as claimed and described in the specification is not taught or fairly suggested by the prior art of record when interpreting claims in light of Applicant arguments and the enabling portions of the specification, inter alia, at Page 8, Line 20 through Page 10, Line 9,

Page 12, Line 12 through Page 15, Line 5, and Page 18, Line 1 through Page 21, Line13, and Figures 1-3 and 7.

20. Claims 20-29 and 40-50 are allowed over the prior art of record, pending resolution of the above double patenting rejections.

Conclusion

21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc D. Thompson whose telephone number is 571-272-3932. The examiner can normally be reached on Monday-Friday, 9am-4pm. If attempts to reach the examiner by telephone are unsuccessful, the Examiner's supervisor, David Wiley can be reached at 571-272-3923. The fax phone number for the organization where this application or proceeding is assigned has recently changed, and is now 571-273-8300.

22. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MARC D. THOMPSON
MARC THOMPSON
PRIMARY EXAMINER

Marc D. Thompson
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